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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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9 RONALD HARRIS,
10 Plaintiff,
11 v.
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13 DEPUTY R. O'LEARY, et al.,
14 Defendants.
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Case No. 1:21-cv-00052-AWI-SKO

**SCREENING ORDER AUTHORIZING
SERVICE OF FIRST AMENDED
COMPLAINT AND FORWARDING
SERVICE DOCUMENTS TO
PLAINTIFF FOR COMPLETION AND
RETURN WITHIN THIRTY DAYS**

(Doc. 10)

30-DAY DEADLINE

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17 On January 14, 2021, Plaintiff Ronald Harris ("Plaintiff"), a prisoner proceeding *pro se*, filed
18 a civil rights complaint against the Fresno County Sheriff's Department and several sheriff's
19 deputies: "Deputy Bush," "Deputy O'Leary," Ashley Vargas, Priscilla Heshmaby, and Joshua
20 Conbrell. (Doc. 1.) Plaintiff alleged causes of action under 42 U.S.C. § 1983 ("section 1983") for
21 excessive force by an officer, "threat to the safety of a child," and "threat to safety of an elderly
22 couple." (*Id.* at 3–5.) The original complaint sought monetary damages of \$1,000,000. (*Id.* at 6.)
23 On April 15, 2021, the undersigned found that Plaintiff's complaint failed to state a cognizable
24 federal claim and granted leave to file an amended complaint. (Doc. 9.)

25 On May 14, 2021, Plaintiff filed a First Amended Complaint against R. O'Leary, Joshua
26 Cantrell, and C. Bush (collectively, "Defendants"), all of whom are alleged to be sheriff's deputies
27 at the Fresno County Sheriff's Department. (Doc. 10.) Plaintiff alleges that Defendants used
28 excessive force against him during his arrest in violation of his rights under the Eighth and

1 Fourteenth Amendments to the United States Constitution.¹ (See Doc. 10 at 3.) Specifically,
2 Plaintiff alleges that, “[d]espite numerous witnesses stating they could not see anything in Plaintiff’s
3 hands (the officers on the scene allege he was holding one or two knives),” Deputy O’Leary fired
4 three shots at him, with one round striking Plaintiff in the head. (*Id.*) According to Plaintiff, Deputy
5 Cantrell subsequently fired a beanbag round at Plaintiff, which struck Plaintiff in his shoulder, and
6 Deputy Bush tased Plaintiff while Plaintiff was approaching the deputies with his hands up. (*Id.*)
7 The Court has screened Plaintiff’s First Amended Complaint pursuant to 28 U.S.C. § 1915A and
8 finds that it states cognizable excessive force claims for damages against Defendants.² Fed. R. Civ.
9 P. 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
10 555 (2007); *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 924–25 (9th Cir. 2001).

11 Accordingly, it is HEREBY ORDERED that:

12 1. Service shall be initiated on the following defendants:

13 **R. O’Leary**

14 **Joshua Cantrell**

15 **C. Bush**

16 2. The Clerk of Court shall send Plaintiff three (3) USM-285 form, three (3)
17 summonses, a Notice of Submission of Documents form, an instruction sheet, and a
18 copy of the First Amended Complaint, filed on May 14, 2021 (Doc. 10).

19 3. Within **thirty (30) days** from the date of this order, Plaintiff shall complete the
20 attached Notice of Submission of Documents and submit it to the Court with the

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22 ¹ The Court notes that claims of excessive force by an officer during an arrest are analyzed under the Fourth Amendment,
23 not the Eighth Amendment. *Graham v. Connor*, 490 U.S. 386, 395 (1989) (“all claims that law enforcement officers
24 have used excessive force—deadly or not—in the course of an arrest . . . should be analyzed under the Fourth
25 Amendment and its ‘reasonableness’ standard”) (emphasis in original).

26 ² To state a claim of excessive force, a plaintiff must allege facts showing that the officer’s conduct was “objectively
27 unreasonable in light of the facts and circumstances confronting them.” *Graham*, 490 U.S. at 397. In determining
28 whether an officer’s conduct is objectively unreasonable, the Court must “balance the gravity of the intrusion on the
individual against the government’s need for that intrusion to determine whether it was constitutionally reasonable.”
Miller v. Clark Cnty., 340 F.3d 959, 964 (9th Cir. 2003). In evaluating reasonableness, the Court considers factors
including: “(a) the severity of the suspect’s alleged crime; (b) whether the suspect posed an immediate threat to the
officers’ safety; (c) whether the suspect was actively resisting arrest or attempting to escape.” *Graham*, 490 U.S. at 396.
Liberally construed, Plaintiff’s allegations that Defendants tased and shot him while he was unarmed and holding his
hands up (Doc. 10 at 3) are sufficient to state cognizable claims for excessive force under the Fourth Amendment against
Defendants.

1 following documents:

- 2 a. A completed summons for each defendant listed above;
- 3 b. A completed USM-285 form for each defendant listed above; and
- 4 c. Four (4) copies of the endorsed First Amended Complaint filed on May 14,
- 5 2021.

6 4. Plaintiff need not attempt service on defendants and need not request waiver of

7 service. Upon receipt of the above-described documents, the Court will direct the

8 United States Marshal to serve the above-named defendant pursuant to Federal Rule

9 of Civil Procedure 4 without payment of costs.

10 5. **The failure to comply with this order will result in a recommendation to the**

11 **assigned district judge that this action be dismissed.**

12 IT IS SO ORDERED.

13 Dated: **June 28, 2021**

14 /s/ Sheila K. Oberto

15 UNITED STATES MAGISTRATE JUDGE

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